

UNITED STATES PATENT AND TRADEMARK OFFICE

1771

In re Patent Application of

Atty Dkt. 11-902

C# M#

HUTCHISON 41

Group Art Unit: 1771

Serial No. 09/846,782

Examiner: Juska

Filed: May 2, 2001

Date: October 24, 2003

Title: TUFTED COVERING FOR FLOORS AND/OR WALLS

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

RESPONSE/AMENDMENT/LETTER

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

 Correspondence Address Indication Form Attached.

Fees are attached as calculated below:

Total effective claims after amendment 38 minus highest number previously paid for 38 (at least 20) = 0 x \$ 18.00 \$ 0.00

Independent claims after amendment 3 minus highest number previously paid for 3 (at least 3) = 0 x \$ 86.00 \$ 0.00

If proper multiple dependent claims now added for first time, add \$290.00 (ignore improper) \$ 0.00

Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s) (\$110.00/1 month; \$420.00/2 months; \$950.00/3 months) \$ 0.00

Terminal disclaimer enclosed, add \$ 110.00 \$ 0.00

First/second submission after Final Rejection pursuant to 37 CFR 1.129(a) (\$770.00)
 Please enter the previously unentered , filed
 Submission attached

Subtotal \$ 0.00

If "small entity," then enter half (1/2) of subtotal and subtract
 Applicant claims "small entity" status. Statement filed herewith -\$ 0.00

Rule 56 Information Disclosure Statement Filing Fee (\$180.00) \$ 0.00

Assignment Recording Fee (\$40.00) \$ 0.00

Other: \$ 0.00

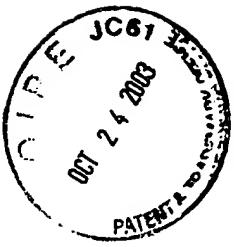
TOTAL FEE ENCLOSED \$ 0.00

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140. A duplicate copy of this sheet is attached.

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NIXON & VANDERHYE P.C.
By Atty: Richard G. Basha, Reg. No. 22,770

Signature: Richard Basha



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

HUTCHISON

Atty. Ref.: 11-902; Confirmation No. 4594

Appl. No. 09/846,782

Group: 1771

Filed: May 2, 2001

Examiner: Juska

For: TUFTED COVERING FOR FLOORS AND/OR WALLS

* * * * *

October 24, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE

While applicant appreciates the indication of the allowance of Claims 2 and 10-12 if rewritten in independent form, applicant submits that the claims are clearly patentable over the references applied by the Examiner.

The rejection of Claims 1, 3-5, 9, 20, 21, 23, 24, 27 and 33-38 as anticipated by Roth, U.S. Patent No. 4,563,378 is respectfully traversed. Accompanying this Amendment are the expert Declarations of Messrs. Shail and Duff, addressing the disclosure of Roth and the Examiner's reliance on the Roth drawing Figures 3-5. (Clean unexecuted copies of the Declarations are attached for ease of reading. Also attached are executed facsimile copies of the identical but executed Declarations).

As particularly stated in the Declarations, the drawing depiction in Roth Figure 3 illustrates a non-continuous stitch line in the warp direction (horizontal direction)

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purportedly tufted into scrim 20. By non-continuous stitch line is meant that the backstitches in the warp direction shown in Figure 3 of Roth are discontinuous and show gaps. Gaps cannot be formed in the warp direction as shown in Roth using conventional tufting machines since each backstitch must extend between adjacent needle penetration holes in the warp direction. The backstitches illustrated in Figure 3, for example, in the top, horizontally extending warp end, are spaced one from the other in the warp direction and form a non-continuous stitch line. A non-continuous stitch line is an impossibility using a tufting machine. The Roth disclosure therefore does not enable the carpet of Figures 3-5 to be made by tufting. If tufting is employed in Roth, the illustrated gaps would not exist and no part of the scrim 20 would be exposed as a discrete wear surface portion. In contrast, the present claims require discrete wear surface portions formed by tufted backstitches and exposed primary backing portions.

Moreover, as explained in the accompanying Declarations, Figure 3 is a magnification of warp and weft ends which, when the carpet is produced at actual size, represents a true area of about 0.38 square inches. At this size and if tufted properly, the scrim 20 would not be exposed and hence no part of the primary backing as claimed would be exposed to form discrete wear surface portions.

Further, the Roth Figures 3-5 do not disclose applicant's claimed invention sufficiently to have placed a person of ordinary skill in the art in possession of applicant's invention since (1) as depicted, the carpet of Figures 3-5 cannot be made by tufting and the Roth disclosure is therefore not enabling and (2) if the carpet of Roth is tufted, Roth would not disclose the invention as claimed, i.e., would not disclose

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discrete wear surface portions formed by backstitches and exposed primary backing portions. Drawing Figures 3-5 of Roth are therefore not an adequate description of a carpet sufficient to anticipate the claimed invention or bar a patent from issuing in this application.

The rejection of Claims 1, 3-5, 9, 20, 21, 23, 24, 27 and 33-38 as unpatentable over Roth is respectfully traversed for the reasons noted above and in the accompanying Declarations. There is no suggestion whatsoever in Roth to disclose a covering with a primary backing having discrete wear surface portions where one wear surface portion comprises the backstitches of tufted yarns and the other wear surface portion is an exposed discrete wear surface portion of the primary backing. The Figure 3 depiction of the Roth carpet cannot be made by the described tufting process and therefore Roth is non-enabling and insufficient to place a person of ordinary skill in possession of applicant's invention.

The rejection of Claims 15, 16, 22, 28, 8, 26, 17, 30, 18, 19, 31 and 32 based on an alleged obviousness in view of Roth is respectfully traversed for the reasons noted above and in the accompanying Declarations.

The rejection of Claims 6, 7, 13, 14, 25 and 29 as unpatentable over Roth in view of Oakey is respectfully traversed for the reasons noted above and in the accompanying Declarations.

The rejection of Claims 22 and 28 as unpatentable over Roth in view of Oakey is also respectfully traversed. Roth is inapplicable for the reasons noted above and in the accompanying Declarations. The Examiner also states that the UV limitation is a

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structural limitation in a method claim. Applicant traverses this statement. The steps in Claims 22 and 28 both include forming the primary backing of a woven material having an ultraviolet stabilizer. The Examiner excludes from within the scope of the claim the ultraviolet nature of the woven material when the step of forming expressly includes a primary backing with an ultraviolet stabilizer. The step is forming, i.e., a manipulative step. This does not amount to a mere use of a particular structure since the manipulative step of forming requires the manipulative step of including in the primary backing the ultraviolet stabilizer. Apparently, the Examiner would consider only the step of forming and not what is being formed. That is not logical since the step of forming is incomplete without knowing what is being formed. It requires the manipulative step of forming to incorporate the ultraviolet stabilizer in the woven material of the primary backing.

Accordingly, reconsideration and allowance of the claims presently pending is respectfully requested.

Respectfully submitted,

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